



## H.R. 268 – Making supplemental appropriations for the fiscal year ending September 30, 2019 (Rep. Lowey, D-NY)

### FLOOR SCHEDULE:

H.R. 268 is expected to be considered on January 16, 2019, under a [rule](#).

The rule waives all points of order against consideration of the bill and against provisions in the bill.

The rule considers as adopted (i.e., “self-executes”) [an amendment](#) that integrates a continuing resolution through February 8, 2019 for those parts of the federal government for which funding has lapsed on December 22, 2018 under the terms of the most recently enacted continuing resolution, H.J.Res. 143.

### TOPLINE SUMMARY:

[H.R. 268](#) would appropriate an additional \$12.2 billion in cap-exempt emergency funding to respond to 2018 hurricanes, wildfires, a typhoon, a Hawaiian volcanic eruption and other natural disasters.

The bill, as amended pursuant to the rule providing for consideration of the bill, also contains a continuing resolution through February 8, 2019 for those parts of the federal government for which funding has lapsed on December 22, 2018 under the terms of the most recently enacted continuing resolution, H.J.Res. 143.

### COST:

According to a Congressional Budget Office (CBO) [estimate](#), the disaster supplemental portion of the bill would provide \$12.197 billion in funding. Within this amount, \$972 million is for increases in mandatory spending. According to CBO, less than 32% of the \$12.2 billion in funding will actually be spent in FY 2019.

### CONSERVATIVE CONCERNS:

#### Disaster Supplemental

Many conservatives will be concerned that the supplemental disaster funding provided by the bill was never requested by the Trump Administration.

Further, many conservatives will be concerned that the supplemental disaster funding to a great extent will not be used for immediate disaster relief purposes. According to CBO, less than 32% of the \$12.2 billion in spending will actually be spent in FY 2019.

Many conservatives will be concerned that, as stated by House Appropriations Committee Chairwoman Lowey (D-NY), the bill provides “\$2.54 billion for resiliency funding to mitigate damage from future

disasters that are accelerating in number due to climate change.” This further acknowledges that multiple billions of dollars of funding in this bill are not designed to address disaster relief efforts, but rather activities that should be addressed through the annual appropriations process that is subject to the limits imposed by the Budget Control Act spending caps.

Conservatives will be concerned that the bill contains no offsets at all. Paying for the costs of supplemental appropriation measures, instead of simply adding it to the national debt, is a principle that conservative members have historically pushed for, including during some of America’s worst natural disasters like [Hurricane Katrina](#) and [Hurricane Sandy](#).

Conservatives will be concerned that the supplemental disaster funding bill is being considered despite the fact that the Disaster Relief Fund currently contains [\\$27.6 billion](#), as of the end of December 2018. On this point, former House Appropriations Chairman Frelinghuysen stated late last year that the [“Federal Emergency Management Agency \(FEMA\) currently has sufficient funds for immediate disaster response.”](#)

Conservatives may be concerned with a number of specific funding provisions contained in the bill:

The bill would appropriate funds for community development block grants at \$1.16 billion.

The bill would include peach and blueberry crop losses *from cold weather in 2017* within the bounds of hurricane disaster assistance previously provided in the Bipartisan Budget Act of 2018.

The bill would provide \$600 million in disaster nutrition assistance funding for Puerto Rico. This is on top of \$1.27 billion provided for this same purpose in earlier disaster funding for the island for the same disasters.

The bill would modify eligibility for the [Market Facilitation Program, a program related to the effects of retaliatory tariffs and nothing to do with disaster assistance](#), with the effect of increasing overall eligibility.

The bill makes several programmatic changes that results in an increase in mandatory spending worth nearly \$1 billion over ten years.

The bill would also appropriate \$60 million for Head Start programs.

The bill would provide \$250 million for Social Services Block Grants – which the [RSC Budget for FY 2019](#) would eliminate.

The bill would effectively eliminate federal share requirements for certain disaster areas in Puerto Rico and the US Virgin Islands temporarily.

\$35 million would go to simply studying potential projects to reduce the risk of future floods (not immediate disaster relief), and \$715 million would go for construction of flood mitigation projects (again, not for immediate disaster relief). \$20 million would go toward weather prediction technology, which conservatives may believe is more properly be funded within BCA constraints.

### **Continuing Resolution**

For the second week in a row, Speaker Pelosi will be forcing the House to vote on appropriations measures that have no realistic chance of becoming law. Many conservatives will view this bill as a

waste of time by House Democratic Leadership because it was understood by House and Senate leadership that the Senate would not consider a government funding measure until it was agreed to by the President. No such agreement exists to date.

Conservative members may be concerned that House Democrats have been forcing separate consideration of this bill that contains a continuing resolution and the other individual appropriations measures in an attempt to peel off Republican members from voting 'no.' This particular instance should be viewed as even more egregious in the minds of conservative members because no longer are Democrats merely forcing consideration of funding for federal departments and agencies, but now are integrating disaster funding into the debate.

Conservatives should be resolute in understanding that votes on these individual funding bills represents part of a cohesive position on the FY 2019 funding debate.

Many conservatives will be concerned that continuing appropriations are being considered without an agreement in place to provide full-year funding for the Department of Homeland Security with additional funding for a southern border wall/barrier as requested by President Trump. Currently enacted funding ([section 230 of the FY 2018 Omnibus](#)) for the Department of Homeland Security includes \$1.571 billion for fencing and border security technology along the southern border, of which about \$1.34 billion can be used for fencing. None of that funding can be used for construction of a President Trump wall according to restrictions of that section. House Republicans passed an amended continuing resolution on December 20, 2018 prior to the lapse in discretionary funding that would have fully funded the President's wall funding request.

- **Expand the Size and Scope of the Federal Government?** Yes, the bill increases federal spending that is not offset.
- **Encroach into State or Local Authority?** A number of disaster aid provisions for programs are more appropriately funded at the state and local level, or the private sector.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

## **DETAILED SUMMARY AND ANALYSIS:**

### **DISASTER ASSISTANCE**

The bill would appropriate an additional \$12.2 billion in cap-exempt emergency funding to respond to 2018 hurricanes, wildfires, a typhoon, a Hawaiian volcanic eruption and other natural disasters.

Because the funding would be emergency designated, it would be exempt from the Budget Control Act (BCA) discretionary spending limits that restrain discretionary spending.

The Trump Administration never made a request for supplemental funding for the funding provided in this bill.

**Agriculture.** \$2.5 billion (excluding wildland fire management funding) would be appropriated to the Agriculture Department. Some items included in this funding would be the following:

- \$1.1 billion for crops (including milk), trees, bushes, livestock, poultry, and vines losses as a consequence of Hurricanes Michael or Florence, other hurricanes, typhoons, volcanic activity, or wildfires occurring in calendar year 2018
  - This assistance may come in the form of state grants or direct payments to producers (who would then be required to buy crop insurance for two years).

- \$150 to the Rural Community Facilities Program Account. The bill would also waive applicability of restrictions related to use and matching requirements contained in the Consolidated Farm and Rural Development Act. (eg. [7 USC 2009f](#)).
- \$600 million in disaster nutrition assistance funding for Puerto Rico. This is on top of \$1.27 billion provided for this same purpose in earlier disaster funding for the island for the same disasters. \$10 million would also be made available for the Northern Mariana Islands.
- \$125 million for the Natural Resources Conservation Service's Watershed and Flood Prevention operations;
- \$480 million for the Farm Service Agency's emergency forest restoration program for expenses related to the consequences of Hurricanes Michael and Florence and wildfires occurring in calendar year 2018.

The bill would include peach and blueberry crop losses from cold weather in 2017 within the bounds of hurricane disaster assistance previously provided in the Bipartisan Budget Act of 2018.

The bill would modify eligibility for the [Market Facilitation Program, a program related to the effects of retaliatory tariffs and nothing to do with disaster assistance](#), with the effect of increasing overall eligibility.

Conservatives may be concerned that a portion of these funds is being used to subsidize the operations of private enterprises sustaining disaster losses viewing it as an inappropriate use of taxpayer dollars. Further, conservatives may be concerned that some of this funding is not designed to provide immediate relief to victims and therefore an inappropriate use of emergency, BCA cap-exempt funding.

This includes \$600 million for economic development assistance grants

**Commerce:** The bill would appropriate \$896 million for activities carried out by the Department of Commerce.

This includes \$600 million for the Economic Development Administration. Conservatives may believe that economic development is an inappropriate use of emergency, BCA cap-exempt funding because it may not be used to provide immediate disaster relief to victims. Further, the [RSC's FY2019 Budget](#) supports eliminating this program as it is duplicative of other similar programs and provides subsidies for something that is not the federal government's responsibility.

Also, \$20 million would go toward weather prediction technology, which conservatives may believe is more properly be funded within BCA constraints.

**Legal Services Corporation:** This program would receive \$15 million. The [RSC FY 2019 Budget](#) would eliminate this program.

**Defense:** The Defense Department would receive \$1.5 billion.

**Army Corps of Engineers** - The bill would appropriate \$1.2 billion to the Army Corps of Engineers.

Within this, \$35 million would go to simply studying potential projects to reduce the risk of future floods (not immediate disaster relief), and \$715 million would go for construction of flood mitigation projects (again, not for immediate disaster relief).

**Interior Department:** The Interior Department would receive \$328 million. This includes spending associated with Central Utah Project, the Bureau of Reclamation (BLM), the US Fish and Wildlife Service, the Park Service, and USGS, as well as other programs conservatives may consider lower priority like the Historic Preservation Fund (for which it would eliminate funding matching requirements).

**Federal Share Requirements for FEMA Assistance:** The bill would effectively eliminate federal share requirements for certain disaster areas in Puerto Rico and the US Virgin Islands temporarily. This would apply retroactively too. Generally, under current law, FEMA is required to cover at least 75 percent of certain disaster assistance costs, with the state covering the rest. The bill also allows FEMA to restore facilities and systems in Puerto Rico and the US Virgin Islands to “industry standards” even if that is better than they were pre-storm. Conservatives may be concerned that reducing the federal share lessens a state’s “skin in the game” and increases the incentive to request more funding than needed.

**EPA:** The EPA would receive \$915 million. Within this sum, \$600,000 would go to for expenses related to improving preparedness of the water sector, which conservatives may see as the responsibility of the private market.

**Fire Borrowing:** The bill would provide \$720 billion to repay Forest Service accounts that were previously used to pay for fire suppression needs, a practice known as “fire borrowing.”

**Health and Human Services (HHS).** The bill would appropriate \$392 million for HHS activities. This include \$30 million for the Substance Abuse and Mental Health Services Administration, and \$250 million for Social Services Block Grants – which the [RSC Budget for FY 2019](#) would eliminate.

The bill would also appropriate \$60 million for Head Start programs. The [RSC’s FY 2019 Budget](#) points out that that empirical evidence shows the effectiveness of Head Start is mixed.

**Medicaid Grants:** The bill would boost Medicaid payments to US territories by \$52 million while temporarily eliminating the local matching requirements for the rest of fiscal 2019.

**Labor.** The DOL would receive \$50 million for dislocated workers’ assistance under the Training and Employment Services program. Conservatives may be concerned that some of this funding is not designed to provide immediate relief to victims and therefore an inappropriate use of emergency, BCA cap-exempt funding.

**Education:** \$165 million would go to “education recovery” purposes for assisting in meeting the educational needs of individuals affected by recent disasters.

**Transportation.** \$1.7 billion would be allocated to the Transportation Department. \$18 million for Federal Aviation Administration, to be derived from the Airport and Airway Trust Fund, would be used for operations. \$1.65 billion would be appropriated to send to states and localities to address federal highway damage.

**Housing and Urban Development.** The bill would appropriate \$1.16 billion for Community Development Block Grants related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation in areas impacted by the disasters of 2018 and 2017.

Conservatives may be concerned that much of the funds spent by the CDBG program is not designed to provide immediate relief to victims, but rather fund long term projects that may be only tangentially related to the disaster, and therefore an inappropriate use of emergency, BCA cap-exempt funding. Many conservatives have expressed concerns that this program has been fraught with wasteful spending. [President Trump’s budget](#), the [House Republican Budget](#), and the [RSC Budget](#) all propose eliminating CDBG.

### **CONTINUING RESOLUTION**

The bill would further extend to February 8, 2019 the discretionary funding and certain programmatic extensions of the [Continuing Resolution Division of H.R. 6157](#), which lapsed on December 22, 2018 under the terms of the most-recently enacted continuing resolution, [H.J.Res 143](#).

Thus, it would extend through February 8, 2019, funding under the following seven appropriations bills:

1. Agriculture, Rural Development, Food and Drug Administration, and Related Agencies
2. Commerce, Justice, Science, and Related Agencies
3. Financial Services and General Government
4. Homeland Security
5. Interior, Environment, and Related Agencies
6. State, Foreign Operations, and Related Programs
7. Transportation, Housing and Urban Development, and Related Agencies

Additionally, it would extend the authorization of several programs through February 8, 2019 including:

- Violence Against Women Act (VAWA),
- “Immigration Extensions” provided in Title II of Division M of the FY 2018 Omnibus,
- Certain registration and fees provisions of the Federal Insecticide, Fungicide, and Rodenticide Act and Federal Food Drug and Cosmetic Act, and
- Temporary Assistance for Needy Families (TANF) and the Child Care Entitlement to States.

## **AMENDMENTS:**

1. [Rep. Sanford Bishop \(D-GA\)](#): Increases by \$1.9 billion funding to agricultural producers who suffered losses from hurricanes, wildfires and other agricultural related losses in 2018. This is not offset.
2. [Rep. Jim McGovern \(D-MA\)](#): Prohibits use of Army Corps and Homeland Security funding provided in the bill from being used to plan or build a border wall. This would apply to the Continuing Resolution portion of the bill too.
3. [Rep. Tom Rice \(R-SC\)](#): Would strike from the bill language that prohibits the Secretary of the Department of Housing and Urban Development’s from waiving requirements related to the labor standards and environmental requirements in administering CDBG funding provided by the bill.
4. [Rep. Nydia Velazquez \(D-NY\)](#): Adds \$5 million to conduct an independent study, including a survey of participants, on the impact of the additional benefits provided through disaster nutrition assistance on the food insecurity, health status, and well-being of program participants. This is not offset.
5. [Rep. Nydia Velazquez \(D-NY\)](#): Would provide \$25 million in funding for Caño Martín Peña channel ecosystem restoration. Conservatives may view this as an earmark, if not technically at least in principle. A earmark is defined as follows:

a provision or report language included primarily at the request of a [Member, Delegate, Resident Commissioner, or] Senator providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.

This is not offset.

6. [Rep. Chris Stewart \(R-UT\)](#): Adds \$21 million to National Forest service funding (already at \$64 million under the bill) with the proviso that the additional money be used for hazardous fuels management. This is not offset.
7. [Rep. Mike Thompson \(D-CA\)](#): Would expand eligibility of agricultural assistance under the bill to harvested adulterated wine grapes – or in the words of the sponsor, to “winegrape growers whose crops were tainted by smoke from a 2018 wildfire, even if the damage is discovered after the grapes have been removed from the vine.”
8. [Rep. Mike Thompson \(D-CA\)](#): Increases funding by \$50 million for the Community Development Fund for infrastructure purposes. This is not offset.
9. [Rep. Garret Graves \(R-LA\)](#): The bill as written would ensure that a project for which funding has already been received from FEMA or the Army Corps would not receive additional disaster CDBG funding made available by the bill. The amendment would allow such projects to receive such additional CDBG funding, but only up to the project’s maximum authorization level.
10. [Rep. Cedric Richmond \(D-LA\)](#): Would apply current law regarding how the Department of Housing and Urban Development handles the issue of delivering duplicative CDBG disaster assistance payments. The effect would be to give the Secretary greater ability to award assistance in certain circumstances where duplication maybe a factor.

Current law allows the provision of Federal assistance to a person who is or may be entitled to receive benefits for the same purposes from another source if such person has not received such other benefits by the time of application for Federal assistance and if such person agrees to repay all duplicative assistance to the agency providing the Federal assistance.

The bill as written provides that “with respect to any such duplication of benefits, the Secretary and any grantee under this section shall not take into consideration or reduce the amount provided to any applicant for assistance from the grantee where such applicant applied for and was approved, but declined assistance related to such major disasters that occurred in 2018 from the Small Business Administration under section 7(b) of the Small Business Act (15 U.S.C. 636(b)).”

Section 7(b) of the Small Business Act authorizes the Small Business Administration to provide deferred participation loans to finance the planning, design, or installation of pollution control facilities.

11. [Rep. Bruce Westerman \(R-AR\)](#): Adds \$10 million in funding to the Forest Service’s State and Private Forestry account for the stated purpose of “helping state and private forest managers recover from the catastrophic fires of 2018 and helping these land managers prepare for the next fire season.” This is not offset.
12. [Rep. Pramila Jayapal \(D- WA\)](#): Prohibits the use of DHS funding provided under the bill from being used for the construction or expansion of immigration detention facilities. This would apply to the Continuing Resolution portion of the bill too.
13. [Del. Gregorio Kilili Camacho Sablam \(I-MP\)](#): Adds \$16 million to the bill’s existing boost in Medicaid funding for the Northern Marianas Islands. This is not offset.
14. [Del. Gregorio Kilili Camacho Sablam \(I-MP\)](#): Adds \$15 million to the bill’s disaster nutrition funding for the Northern Mariana Islands. This is not offset.

15. [Del. Amata Radewagen \(R-AS\)](#): Adds \$5 million to the bill's disaster nutrition funding for Puerto Rico. This is not offset.

### **COMMITTEE ACTION:**

H.R. 268 was introduced on January 8, 2019 and referred to the House Appropriations Committee in addition to the Committee on the Budget.

### **OUTSIDE GROUPS:**

**FreedomWorks** – [Key Vote No](#)  
[Taxpayers for Common Sense](#)  
[Heritage Foundation](#)

### **ADMINISTRATION POSITION:**

A Statement of Administration Policy is not available at this time. However, the bill does include a continuing resolution to extend government funding to stop the partial federal shutdown. The [Statement of Administration Policy](#) for H.J.Res. 27 and H.J.Res. 28 (two continuing resolutions under consideration in the House this week) recommended a presidential veto and stated: "The Administration is committed to working with the Congress to reopen agencies affected by lapsed appropriations, but any effort to do so must address the security and humanitarian crisis on our Southwest border and should restore funding for all agencies affected by the lapse."

### **CONSTITUTIONAL AUTHORITY:**

According to the bill's sponsor: "Congress has the power to enact this legislation pursuant to the following: The principal constitutional authority for this legislation is clause 7 of section 9 of article I of the Constitution of the United States (the appropriation power), which states: "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law . . ." In addition, clause 1 of section 8 of article I of the Constitution (the spending power) provides: "The Congress shall have the Power . . . to pay the Debts and provide for the common Defence and general Welfare of the United States . . ." Together, these specific constitutional provisions establish the congressional power of the purse, granting Congress the authority to appropriate funds, to determine their purpose, amount, and period of availability, and to set forth terms and conditions governing their use.

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